

PS 5510.09, SEARCHING AND DETAINING OR ARRESTING PERSONS OTHER
THAN INMATES



U.S. Department of Justice
Federal Bureau of Prisons

Change Notice

DIRECTIVE AFFECTED: 5510.09
CHANGE NOTICE NUMBER: 5510.09
DATE: 03/06/98

RULES EFFECTIVE: 4/9/98

1. PURPOSE AND SCOPE. To revise provisions in the Program Statement pertaining to Searching and Detaining or Arresting Persons Other Than Inmates.
2. SUMMARY OF CHANGES. The updated Program Statement removes the requirements for camps to maintain metal detention devices at entrances and extends the Warden's authority to authorize visual searches of visitors who are suspected of being in possession of contraband at Low Security institutions.
3. ACTION. File this Change Notice in front of Searching and Detaining or Arresting Persons Other Than Inmates.

/s/
Kathleen M. Hawk
Director



Program Statement

OPI: CPD
NUMBER: 5510.09
DATE: 03/06/98
SUBJECT: Searching, Detaining,
or Arresting Persons
Other than Inmates

RULES EFFECTIVE: 4/9/98

1. [PURPOSE AND SCOPE §511.10]

a. In an effort to prevent the introduction of contraband (such prohibited objects as defined in § 511.11(c)) into an institution, Bureau of Prisons staff may subject all persons entering an institution, or during their presence in an institution, to a search of their persons and effects.]

The Director, Bureau of Prisons, has delegated authority under 28 CFR 0.96(q) to make rules governing the control and management of Federal correctional institutions. Other applicable authority concerning contraband and Federal correctional institutions is found in 28 CFR 6.1.

Title 18 U.S.C. of Sections 1791 and 3571, provides a penalty of imprisonment for not more than 20 years, a fine of not more than \$250,000, or both, to a person who, in violation of a statute, rule, or order issued pursuant to that statute, provides, or attempts to provide, to an inmate anything whatsoever without the Warden's knowledge and consent. This includes, but is not limited to, such objects as firearms, weapons, narcotics, drugs, and currency.

Precautions must be taken to prevent the introduction of contraband into a correctional institution. To protect the security and order of Bureau of Prisons institutions, it must be

[Bracketed Bold - Rules]

Regular Type - Implementing Information

presumed that possessing contraband, or introducing or attempting to introduce any contraband into an institution, is for the purpose of providing it to an inmate. This includes the possibility of a person who, prior to leaving the institution grounds, tries to hide contraband for later retrieval by an inmate.

[b. Title 18, United State Code, section 3050 authorizes Bureau of Prisons employees (does not include United States Public Health Service employees) -

(1) to make an arrest on or off Bureau of Prisons premises without warrant for violation of the following provisions regardless of where the violation may occur: §111 (assaulting officers), §751 (escape), §752 (assisting escape) of title 18, United States Code, and §1826 (c) (escape) of title 28, United States Code;

(2) to make an arrest on Bureau of Prisons premises or reservation land of a penal, detention, or correctional facility without warrant for violation occurring thereon of the following provisions: §661 (theft), §1361 (depredation of property), §1363 (destruction of property), §1791 (contraband), §1792 (mutiny and riot), and §1793 (trespass) of title 18, United States Code, and

(3) to arrest without warrant for any other offense described in title 18 or 21 of the United States Code, if committed on the premises or reservation of a penal or correctional facility of the Bureau of Prisons if necessary to safeguard security, good order, or government property.

Bureau policy provides that such an arrest may be made when staff has probable cause to believe that a person has committed one of these offenses and when there is likelihood of the person escaping before a warrant can be obtained.]

2. PROGRAM OBJECTIVES. The expected results of this program are:

a. Notification of the Bureau's search policy will be posted at all entrances to the institution and on employee bulletin boards.

b. Visitors, except officials specified, will be required to undergo appropriate searches prior to entering the institution, including a walk-through metal detector.

c. Walk-through metal detectors will be inspected daily to ensure they are operating properly.

d. Any pat search, visual search or urine surveillance test of a visitor will be done by staff of the same sex as the visitor.

e. Efforts to prevent the introduction of contraband will be enhanced.

f. Any detention or arrest of a non-inmate will be done in accordance with statutory requirements.

3. DIRECTIVES AFFECTED

a. Directive Rescinded

PS 5510.07 Searching, Detaining, or Arresting Persons
Other Than Inmates (5/10/95)

b. Directives Referenced

PS 1380.05 Special Investigative Supervisor's Manual
(8/1/97)
PS 3420.08 Standards of Employee Conduct (3/7/96)
PS 3735.04 Drug-Free Workplace (6/30/97)
PS 5267.05 Visiting Regulations (7/21/93)
PS 5500.09 Correctional Services Manual (10/17/97)
PS 5558.12 Firearms and Badges (6/7/96)

c. Rules cited in this Program Statement are contained in 28 CFR §§511.10 through 511.16.

d. Code of Federal Regulations Referenced

28 CFR §0.96 Delegations
28 CFR §6.1 Consent of Warden or Superintendent Required

e. United States Code Referenced

18 U.S.C. §111	Assaulting, Resisting, or Impeding Certain Officers or Employees
18 U.S.C. §661	Within Special Maritime and Territorial Jurisdiction
18 U.S.C. §751	Prisoners in Custody of Institution or Officer
18 U.S.C. §752	Instigating or Assisting Escape
18 U.S.C. §921	Definitions
18 U.S.C. §1361	Government Property or Contracts
18 U.S.C. §1363	Buildings or Property Within Special Maritime and Territorial Jurisdiction
18 U.S.C. §1791	Providing or Possessing Contraband in Prison
18 U.S.C. §1792	Mutiny and Riot Prohibited
18 U.S.C. §1793	Trespass on Bureau of Prisons Reservations and Land
18 U.S.C. §3050	Bureau of Prisons Employees' Powers
18 U.S.C. §3571	Sentence of Fine
18 U.S.C. §4012	Summary Seizure and Forfeiture of Prison Contraband
28 U.S.C. §1826	Recalcitrant Witnesses

4. STANDARDS REFERENCED

a. American Correction Association 3rd Edition Standards for
Adult Correctional Institutions: 3-4445

b. American Correctional Association 3rd Edition Standards for
Adult Local Detention Facilities: 3-ALDF-5D-15

c. American Correctional Association 3rd Edition Standards for
Adult Correctional Boot Camp Programs: 1-ABC-5D-15

5. [DEFINITIONS §511.11

a. Reasonable Suspicion. As used in this rule, "reasonable suspicion" exists if the facts and circumstances that are known to the Warden warrant rational inferences by a person with correctional experience that a person is engaged, or attempting or about to engage, in criminal or other prohibited behavior. A reasonable suspicion may be based on reliable information, even

if that information is confidential; on a positive reading of a metal detector; or when contraband or an indicia of contraband is found during search of a visitor's personal effects.]

Reasonable suspicion must be specifically directed to the person to be searched. In determining "reasonable suspicion," staff are to consider whether the available information could reasonably lead a person with correctional experience to suspect an individual is engaged in criminal or other prohibited behavior. If the facts support this determination, a reasonable suspicion exists and the person should be questioned.

When the person resists questioning, or when circumstances arising from this questioning (e.g., evasiveness, extreme nervousness, or false responses) support the original reason for delaying the person, staff may have sufficient basis to provide a greater degree of custody or restraint (see Sections 10 and 12 of this Program Statement). A visitor who objects to any of the search or entrance procedures always retains the option of refusing and leaving, unless there is reason to detain and/or to arrest.

[b. Probable Cause. As used in this rule, "probable cause" exists if the facts and circumstances that are known to the Warden would warrant a person of reasonable caution to believe that an offense has been committed.]

As used in this paragraph, the term "Warden" refers to the Warden, Acting Warden, or Administrative Duty Officer. This authority may not be further delegated.

"Mere suspicion" is not a sufficient standard under which an arrest may be made. Probable cause is a higher standard than reasonable suspicion. The existence of reasonable suspicion warrants the person(s) being questioned.

Probable cause exists when the specific, objective facts presented to a reasonably cautious person (not necessarily a law enforcement officer) would lead that person to believe sufficient information exists to warrant consideration for prosecution. Probable cause may be based on information from a reliable informant. Probable cause must exist prior to making an arrest. Bureau staff may arrest a visitor only when there is probable

cause that a visitor has violated one of the provisions cited in Section 1 of this Program Statement, or any future arrest authorization statute. For example, Bureau staff may arrest a visitor when there is probable cause that the visitor is attempting to assist an escape, induce a riot at the institution, or introduce dangerous contraband into the institution.

For purpose of this policy, dangerous contraband refers to any non-prescribed narcotic or other controlled dangerous substance, firearm, weapon, explosive, or any lethal or poisonous gas, or any other substance or object designed to kill, injure, or disable. Absent a violation of one of the provisions cited in Section 1 of this Program Statement, Bureau staff may only detain the visitor as provided in Section 10 of this Program Statement.

[c. Prohibited Object. A firearm or destructive device; ammunition; a weapon or an object that is designed or intended to be used as a weapon or to facilitate escape from a prison; a narcotic drug, lysergic acid diethylamide, or phencyclidine; a controlled substance or alcoholic beverage; any United States or foreign currency; and any other object that threatens the order, discipline, or security of a prison, or the life, health, or safety of an individual.]

The terms "firearm, ammunition," and "destructive device" are defined in 18 U.S.C. §921 as follows:

(1) Firearm means any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; the frame or receiver of any such weapon; any firearm muffler or firearm silencer; or any destructive device.

(2) Ammunition means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm.

(3) Destructive device means any explosive, incendiary, or poison gas, bomb, grenade, rocket having a propellant charge of more than four ounces; a missile having an explosive or incendiary charge of more than one-quarter ounce; mine; or device similar to any of the devices described. This also includes any type of weapon, by whatever name known, which will or may be

readily converted to expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter. Also included is any combination of parts either designed or intended for use in converting any device into any destructive device and from which a destructive device may be readily assembled.

d. Informant. An informant is an individual (e.g., an inmate or a member of the public) who provides staff, usually at the individual's initiation, with information about the commission of an offense or misconduct. Reliability may be determined by a record of past reliability or by other factors. To the extent practicable, staff shall attempt to independently verify the information received.

6. SEARCH TYPES

a. Metal Detection Devices. The best method for preventing weapons and other dangerous objects from being introduced into the institution is through metal detection devices. Low and above security level institutions are required to use metal detectors for screening visitors (including delivery persons, maintenance personnel, tour groups, etc.) into the institution. Metal detectors, walk-through and/or hand-held, are to be used at entrances where visitors enter the institution. The Warden may install metal detection devices at any other location on Federal property, both within and outside the institution, as necessary for the control of contraband.

(1) A walk-through metal detector is preferred for processing visitors. If physical limitations or mechanical breakdowns prevent its use, a hand-held metal detector shall be used.

(2) A Lieutenant is to conduct a daily test of the walk-through metal detector to ensure the device is working properly and that the alarm tolerance level will effectively prevent metallic contraband (e.g., firearms) from being introduced into the institution. The test results are to be recorded in a daily log.

(3) Requests for purchasing metal detectors require the Warden's approval.

b. Pat or Visual Search. A metal detector search will not discover non-metallic contraband such as narcotics. Preventing the introduction of such contraband may require that a pat or a visual (strip) search be conducted when there is reasonable suspicion that a person possesses or is introducing, or attempting to introduce, contraband into the institution.

A visual search may be given a visitor as a prerequisite to the visit in Low and above security level institutions, Administrative Institutions, or in a pretrial or jail (detention) unit within any security level institution. Only the Warden, Acting Warden, or Administrative Duty Officer may authorize a pat search or visual search of a non-inmate.

c. Breathalyser/Urine Surveillance Tests. In a correctional setting, additional precautions may be necessary to ensure the safety, security, and good order of the institution, and to protect the public. For example, a visitor may appear to be intoxicated. Allowing such a person into the visiting area can adversely affect other individuals in the visiting area, as well as possibly create a disruptive situation within the institution. To prevent such an occurrence, without arbitrarily restricting the person's right to visit, Bureau staff may offer the individual an opportunity to take a breathalyser, urine test, or other comparable test as a precondition to visiting.

A breathalyser test or urine surveillance test may be administered only when there is reasonable suspicion to believe the person is under the influence of narcotics, drugs, or intoxicants, and the individual voluntarily agrees to the test. Only the Warden, Acting Warden, or Administrative Duty Officer may authorize giving one or both of these tests. It is also permissible to disallow or terminate a visit when the visitor's behavior or condition is deemed to pose a threat to the security or orderly running of the institution.

While staff may deny a visit based on suspected intoxication, whether or not a breathalyser is used, staff may not detain a visitor who is suspected of being intoxicated. Staff may wish to contact local authorities to notify them that an individual who is suspected of being intoxicated is preparing to leave Federal property. When an individual is denied the opportunity to visit,

but refuses to leave Federal property, local law enforcement authorities should be notified.

7. [PROCEDURES FOR SEARCHING VISITORS §511.12]

a. The Warden shall post a notice outside the institution's secure perimeter advising all persons that it is a Federal crime to bring upon the institution grounds any weapons, intoxicants, drugs, or other contraband, and that all persons, property (including vehicles), and packages are subject to search. A person may not use either a camera or recording equipment on institution grounds without the written consent of the Warden.]

The unauthorized use of a camera or recording equipment presents a danger to institution security (18 U.S.C. 4042) and a potential invasion of privacy. Any request to use a camera or recording equipment on institution grounds shall be addressed to the Warden. The request may be approved when it is determined that photographs or recordings do not pose a potential threat to the institution's security or to the privacy of individuals, including inmates and staff.

[b. The Warden may require visitors entering the institution from outside the secure perimeter to submit to a search:

(1) By electronic means (for example, walk-through and/or hand-held metal detector).]

Visitors, except as noted below, are to be screened by a metal detector. Department of Justice employees, state and local law enforcement personnel, Members of Congress, and members of the Judicial Branch are not ordinarily screened by metal detectors; however, the Warden may require these individuals to pass through a metal detector prior to entering the institution.

If an individual fails to clear a walk-through metal detector, a hand-held metal detector is to be used. Failure to clear the hand-held metal detector requires the individual to submit to a pat search before entering the institution.

[(2) Of personal effects. The institution ordinarily provides locker space for personal effects not taken into the visiting room.]

The personal effects of a visitor (such as coats and handbags) shall be inspected for contraband if the institution allows these items into the visiting area.

[c. The Warden may authorize a pat search of a visitor as a prerequisite to a visit when there is reasonable suspicion that the visitor possesses contraband, or is introducing or attempting to introduce contraband into the institution.

d. The Warden may authorize a visual search (visual inspection of all body surfaces and cavities) of a visitor as a prerequisite to a visit to an inmate in a low and above security level institution, or administrative institution, or in a pretrial or in a jail (detention) unit within any security level institution when there is reasonable suspicion that the visitor possesses contraband or is introducing or attempting to introduce contraband into the institution.]

Body cavity intrusions are not permitted.

[e. The Warden may authorize a breathalyser or urine surveillance test or other comparable test of a visitor as a prerequisite to a visit to an inmate when there is reasonable suspicion that the visitor is under the influence of a narcotic, drug, or intoxicant. As stated in §511.14, the visitor may refuse to take the test, but the visit will not be allowed.]

Section 511.14 refers to Section 9 of this Program Statement. Staff are to advise the visitor of the visitor's right to refuse the test, with the result that the visit would not be allowed. To ensure the orderly operation of the visiting area, a person may be denied entry and visiting privileges, even if the source of the visitor's behavior is (or is claimed to be) legitimate medication. Identification of the drug or chemical involved is not necessary to support a decision not to allow entry.

[f. A pat search, visual search, or urine surveillance test is to be conducted by a person of the same sex as the visitor. A pat search, visual search, urine surveillance, or breathalyser test shall be conducted out of the view of other visitors and inmates.]

To the extent practicable, a staff witness of the same sex should observe the search or test procedures.

g. Bureau staff are to conduct the search of a visitor in accordance with current law enforcement procedures. Information on these procedures may be obtained from the FBI or other appropriate law enforcement officials.

h. As used in this Section, the term "Warden" refers to the Warden, Acting Warden, or Administrative Duty Officer. This authority may not be further delegated.

i. When a visitor receives a pat search, visual search, breathalyser or urine surveillance test, or other comparable test, a full written report giving the reason(s), the results of the search/test, and the circumstances involved in the search/test shall be forwarded through the Warden to the Regional Director.

If the search or test procedure is based on information provided by an informant, the report should identify the information provided, how the informant received knowledge of the information, and the basis upon which the information was determined reliable. A copy of this report shall be forwarded to the Correctional Services Administrator, Central Office.

8. [CONTROLLED VISITING - DENYING VISITS §511.13

a. The Warden may restrict visiting to controlled situations or to more closely supervised visits when there is any suspicion that the visitor is introducing or attempting to introduce contraband, or when there has been a prior incident of such introduction or attempted introduction, or when there is any concern, based upon sound correctional judgment, about the visitor presenting a risk to the orderly running of the visiting room or area.]

For example, the Warden may limit visiting to controlled situations or to supervised visits when a reasonable suspicion exists that the visitor is introducing or attempting to introduce contraband secreted in a body cavity, which could not be detected by a pat search. A visitor's previous behavior may be a basis for separate or more controlled visiting, because of a concern

that the visitor may disrupt the visiting area's orderly operation. This step may be taken without breathalyser or drug testing.

[b. The Warden may deny visiting privileges when a controlled or closely supervised visit is not possible.

c. Staff shall deny admission to the institution to a visitor who refuses to be screened by a metal detector or who refuses to undergo a search of person and/or effects as dictated by these rules.]

9. [RIGHT OF REFUSAL/TERMINATION OF A VISIT §511.14

a. A visitor who objects to any of the search or test or entrance procedures has the option of refusing and leaving the institution property, unless there is reason to detain and/or arrest.]

Staff may not use force to require a visitor to submit to any search, test or entrance procedures.

[b. Staff may terminate a visit upon determining that a visitor is in possession of, or is passing or attempting to pass contraband not previously detected during the search process, or is engaged in any conduct or behavior which poses a threat to the orderly or secure running of the institution, or to the safety of any person in the institution. The staff member terminating the visit is to prepare written documentation describing the basis for this action.]

The Warden shall designate staff authorized to terminate a visit. The required documentation on the basis for terminating a visit is to include:

- # the date,
- # the time the visit began,
- # the time efforts to terminate began,
- # the time of termination,
- # persons involved, and
- # reasons for the termination.

The original of this report is to go to the Warden, with a copy to the Regional Director.

10. [DETAINING VISITORS §511.15

a. Staff may detain a visitor or any person who is found to be introducing or attempting to introduce such contraband as narcotics, intoxicants, lethal or poisonous chemicals or gases, guns, knives, or other weapons, or who is engaged in any other conduct which is a violation of law (including, but not limited to, actions which assist escape, such as possession of escape paraphernalia, or which induce riots), pending notification and arrival of appropriate law enforcement officials. The standard for such detention is a finding, based on probable cause, that the person has engaged in such a violation. Institution staff should not interrogate suspects unless immediate questioning is necessary to protect the security of the institution or the life or safety of any person.]

Interrogation of persons found with contraband or attempting to introduce contraband into the institution is ordinarily the responsibility of the FBI or other appropriate law enforcement officials. When this is not possible, Bureau staff shall ensure that the procedures followed are consistent with current law enforcement practices. The FBI or other appropriate law enforcement officials may be contacted when questions arise concerning current practices.

(1) Handling of evidence shall be done in accordance with the "CHAIN OF CUSTODY RULES FOR PRESERVATION OF EVIDENCE." Refer to the Special Investigative Supervisor's Manual for further information concerning the collection and maintenance of evidence.

(2) Contraband in the form of suspected drugs or marijuana is to be tested with the approved narcotic testing kit. A positive test result is sufficient reason to refer the incident to the appropriate law enforcement officials.

[b. Staff shall employ only the minimum amount of force necessary to detain the individual. Visitors will be detained in an area away from the sight of, and where there can be no contact with, other visitors and inmates.]

Staff shall forward a report through the Warden to the Regional Director describing the circumstances requiring the use of force.

c. As provided in Section 12, Bureau staff may arrest an individual who violates one of the provisions cited in Section 1. When there is probable cause to effect an arrest under one of these sections, there is clear authority to detain the individual. For other violations of the law, Bureau staff ordinarily are limited to detaining the individual, in lieu of arrest, only when there is an immediate threat posed to institution security or good order, or to the life or safety of any person, regardless of whether appropriate law enforcement officials have arrived. Staff should write down the appropriate information (such as the person's name, description, license number, circumstances warranting referral) and provide that information to law enforcement officials when they arrive.

A person may be briefly detained, pending investigation or advice from appropriate law enforcement officials, to confirm or dispel a suspicion that the individual may have committed a felony. For example, staff may elect to detain a visitor to the institution who is suspected of assaulting a staff member. Then, the person may be held for a reasonable period of time, pending the notification of, and consultation with, appropriate law enforcement officials.

An individual is not ordinarily detained for conduct which poses little or no threat to the institution's security or good order. For example, if a visitor is observed by staff to be under the influence of alcohol or drugs, and the visitor makes no apparent effort to bring alcohol or drugs into the institution, staff ordinarily would not detain the visitor, although they have the authority to do so. Staff have the option of advising the appropriate law enforcement officials of this situation. Those officials will then decide whether they wish to stop the individual upon the individual's departure from the Federal reservation.

d. Bureau counsel (Regional or Central Office) are to be contacted regarding any individual detained in lieu of arrest for over two hours. Bureau legal counsel should also be consulted when staff have questions about detaining an individual.

11. PROCEDURES FOR SEARCHING EMPLOYEES. The Bureau does not routinely search its employees or their property; however, in accord with Bureau standards of employee conduct, the Bureau does retain the right to conduct searches of employees when such a search is believed necessary to ensure institution security and good order. As used in this Section, "search" includes the use of metal detectors, pat search, visual (strip) search, breathalyser test, and urine surveillance or other comparable tests. As used in this Section, the term "Warden" refers to the Warden, Acting Warden, or Administrative Duty Officer. This authority may not be further delegated.

a. The Warden may authorize the search of an employee and/or the employee's personal property which is on the federal reservation under the following conditions:

(1) The Warden may require employees to submit to a search by electronic means (for example, walk-through and/or hand-held metal detector) as a means to ensure institution security and good order. This may be done routinely or randomly.

(2) The Warden may require a pat search or a visual search of an employee when the Warden has a reasonable suspicion that an employee:

- # is introducing or attempting to introduce contraband into the institution;
- # is removing property from the facility without authorization;
- # appears to be under the influence of a narcotic, drug, or intoxicant; or
- # appears to be involved in any criminal behavior or any behavior which poses a threat to the security or good order of the institution.

The Warden may not compel a body cavity intrusion of an employee.

(3) The Warden may require a breathalyser or urine surveillance or other comparable test of an employee when the

Warden has a reasonable suspicion that the employee is under the influence of a narcotic, drug, or intoxicant which could pose a threat to the safety of any person in the institution or to the security or good order of the institution.

A pat or visual search is to be conducted by a person of the same sex as the employee. Procedures for urine surveillance testing of employees are contained in the Program Statement on the Drug-Free Workplace Program.

b. Staff should ensure that the procedures followed with respect to any other search of an employee are consistent with current law enforcement practices. The FBI or other appropriate law enforcement officials should be contacted when questions arise regarding current law enforcement practices.

Similarly, the Warden should ordinarily request the FBI or other appropriate law enforcement officials to investigate and conduct the search of an employee's reservation housing. Exceptions to this procedure are:

(1) when a routine health or sanitation inspection is given, during the course of which "contraband" (e.g., illegal drugs) is discovered in "plain view" (e.g., on a dresser within the reservation housing); or

(2) when time and/or circumstances do not permit the FBI or other appropriate law enforcement officials to undertake the investigation or to conduct the search, the Warden shall, consistent with this Program Statement's procedures, take that action necessary to secure a search warrant.

A search may not be conducted under the guise of a health or sanitation inspection. It should be noted that search of personal property which is on a federal reservation but outside a personal residence may be done upon proper advance notice to the employee of the potential for such a search (see Section 11.c.).

c. The Warden shall prepare a written report whenever an employee is given a pat or visual search, breathalyzer test, urine surveillance test or other comparable test. This report is to include:

the date and time,
persons (including witnesses) involved,
basis for the search/test, findings, and
action taken, if any.

If search or test procedure is based on information provided by an informant, the report should identify the information provided, how the informant received knowledge of the information, and the basis upon which the information was determined reliable. A copy of this report is to be forwarded to the Regional Director. Other tests of this same type are also authorized by this policy, even though they are not specifically a "breathalyser" or "urine surveillance" test.

d. Bureau employees are to be afforded notice of the fact that they are subject to search of their persons and/or property. This notice is to be afforded in three distinct ways.

(1) Each employee, upon entry into the Bureau of Prisons, receives, and signs for, a copy of the Bureau's Program Statement on Standards of Employee Conduct and Responsibility. This policy states that Bureau employees are subject to search. The search may be done by metal detectors, pat search, visual search, urine surveillance, breathalyser test, and other comparable means. An employee's refusal to undergo a search (including test) procedure is a basis for disciplinary action, including removal.

(2) The Introduction to Correctional Techniques course and the Institution Familiarization afforded employees will include this notice as part of their respective training packages.

(3) A notice, similar to the sign required in Section 15, is to be posted on the employee bulletin board within each institution. This notice shall specifically state that employees are subject to the same conditions listed in the general notice to all persons, except that refusal to undergo a search of person or property is a basis for disciplinary action.

12. **USE OF ARREST AUTHORITY §511.16.** To effect an arrest under any of the cited sections in §511.10(b), or under any future arrest authorization statute that may be approved by the Congress of the United States, staff shall have probable cause that the suspected individual is violating the law. Whenever possible,

the Warden or designee shall make the determination as to whether an arrest should occur.]

It is the Bureau's policy that firearms are to be used as a last resort to prevent escapes; to prevent the loss of life or grievous bodily harm; or to protect government property, upon determining that the damage or loss of property would facilitate escape, loss of life, or grievous bodily harm. When firearms must be used to arrest and/or detain a person other than an inmate, procedures in the Program Statement on Firearms and Badges shall be followed.

Section 511.10(b) refers to Section 1.b. A visitor who objects to any of the search or entrance procedures always retains the option of refusing and leaving, unless there is reason to detain and/or arrest. Within this context, Bureau policy is to arrest those persons who are in violation of the sections cited in §511.10(b). The sub-sections below briefly discuss the most pertinent of these sections and the procedures to be followed.

a. Section 111 - Assaulting Officers. A Bureau employee has the authority to arrest without warrant any person who forcibly assaults, resists, impedes, intimidates, or interferes with a Bureau employee of any federal institution while engaged in or on account of the performance of official duties.

b. Section 661 - Theft. A Bureau employee has the authority to arrest without warrant any person who on Bureau premises or reservation land takes and carries away, with intent to steal or purloin, any personal property of another.

c. Section 751 - Prisoner in Custody of Institution or Officer. A Bureau employee has the authority to arrest an inmate who is attempting to escape or who is on escape status. The escapee should be returned to a Federal facility as soon as possible, but may be temporarily detained by local authorities for further movement. Staff observing an escape should not attempt an apprehension without sufficient assistance. Assistance may be obtained through the local institution or any law enforcement agency. The Bureau is to be notified of any apprehension and site of detention as soon as practicable.

d. Section 752 - Instigating or Assisting Escape. A Bureau employee has the authority to arrest any individual who is actively instigating or assisting an inmate in an immediate escape from custody. This authority does not extend to those individuals suspected of this activity and is limited to those instances when the individual(s) is observed in an active role of assisting an inmate to escape from immediate custody or the individual's role as an instigator is such that there is probable cause that continued instigation could lead to an attempt to escape from custody. Suspicion of such activity and any arrests resulting from illegal acts described in this section will be reported to the appropriate law enforcement officials.

e. Section 1361 - Depredation of Property. A Bureau employee has the authority to arrest on Bureau premises or reservation land any person who willfully injures or commits any depredation against any property of the United States, or of any department or agency thereof.

f. Section 1363 - Destruction of Property. A Bureau employee has the authority to arrest on Bureau premises or reservation land any person who willfully and maliciously destroys or injures or attempts to destroy or injure any building, structure, machinery, or building materials.

g. Section 1791 - Providing or Possessing Contraband in Prison. A Bureau employee may search a visitor consistent with this Program Statement's procedures. Under this section, a Bureau employee has the authority to arrest an individual who provides, or attempts to provide, contraband to an inmate, or who possesses contraband, or who is introducing or attempting to introduce contraband into a Federal institution, although in practice an arrest ordinarily is to occur only when dangerous contraband is involved. In order to effect an arrest under 18 U.S.C. §1791, there must be a deliberate attempt on the part of the individual to introduce contraband for delivery to an inmate. Thus, a visitor found to have contraband in a vehicle on an institution reservation does not ordinarily present sufficient cause for arrest by an employee, although the nature of the contraband may warrant a referral to the appropriate law enforcement officials. The visitor ordinarily is asked to leave and to dispose of the contraband before returning.

When dangerous contraband is introduced or attempted to be introduced into a Federal institution, staff are to impound this contraband for referral to the appropriate law enforcement officials.

(Note: Although 18 U.S.C. §4012 authorizes Bureau employees to summarily seize any object introduced into, or possessed within, a Federal institution in violation of a rule, regulation, or order promulgated by the Director, the Bureau has determined that, as applied to non-inmates, such seizure ordinarily is to be limited to dangerous contraband, with said contraband being referred to the appropriate law enforcement officials, for possible use in criminal proceedings. Any exception to this procedure must have the prior written approval, with reasons included, of the Warden, Acting Warden, or Administrative Duty Officer. A copy of this report is to be forwarded to the Regional Correctional Services Administrator.)

Good judgment must prevail in defining contraband sufficiently serious to effect an arrest of a civilian. Staff shall consider as dangerous contraband any item which poses a serious threat to the security of an institution. Examples of dangerous contraband include, but are not limited to:

- (1) weapons (e.g., knife, gun),
- (2) explosives,
- (3) lethal or poisonous gas, and
- (4) non-prescribed narcotics or other controlled dangerous substances.

A Bureau employee may arrest anyone who conveys into an institution or from one place to another therein, any firearm, weapon, explosive, or any lethal or poisonous gas or any other substance or thing designed to kill, injure, or disable any employee, inmate, or other person.

h. Section 1792 - Mutiny and Riot Prohibited. A Bureau employee who encounters an individual who is instigating, conniving, or willfully attempting to cause or assist, or is conspiring to cause any mutiny or riot at any Federal institution, shall effect an arrest.

Bureau policy is to effect an arrest for a violation listed in section 1792 upon a determination that the act is deliberate and intentional, and when the employee has probable cause to believe that the individual intends to violate the cited prohibited acts of this section.

13. ARREST SITUATIONS. To effect an arrest under any of the cited sections, a probable cause must exist that the suspected individual is violating the law, and, with respect to violations of 18 U.S.C. §§751, 752, 1791, 1792, or 1793, that this action is for the purpose of attempting to introduce dangerous contraband or to assist an escape or to induce a riot at the institution. Institution visitors who consume alcoholic beverages on reservation grounds would not ordinarily be arrested for introduction of contraband. Such persons should be escorted off government property and referred to local authorities. An armed hunter who inadvertently enters a reservation would not be subject to arrest for possession of and/or introduction of a weapon on a Federal reservation.

Good judgment must prevail, the surrounding circumstances must be considered, and, whenever possible, the Warden or designee should make the determination as to whether an arrest should occur.

The Warden shall notify the Regional Director or designee telephonically when an arrest is made under Section 12 of this Program Statement. Detailed written documentation shall be forwarded to the Regional Director within three work days of the arrest.

14. REMOVAL OF A PERSON OTHER THAN AN INMATE FROM AN INSTITUTION. If a person is denied entry to the institution, but refuses to leave the Federal reservation, the appropriate law enforcement authorities should be contacted to remove the person, unless the person's actions fall within one of the sections cited above. When time or circumstances do not permit this contact, or when the appropriate law enforcement officials are unable to come to the institution, staff may use the minimum force necessary to remove a person who refuses to leave Federal property. Staff shall forward a report through the Warden to the Regional Director describing the circumstances requiring the use of force.

15. NOTIFICATION AT ENTRANCES. An easily read sign (for both visitors and employees) is to be posted at the commonly used entrances into each institution. Camps should post the sign at each main entrance. The sign (in both English and Spanish) should generally read as follows:

WARNING

IT IS A FEDERAL CRIME TO BRING UPON THE INSTITUTION GROUNDS ANY FIREARM, DESTRUCTIVE DEVICE, AMMUNITION, OTHER OBJECT DESIGNED TO BE USED AS A WEAPON, NARCOTIC DRUG, CONTROLLED SUBSTANCE, ALCOHOLIC BEVERAGE, CURRENCY, OR ANY OTHER OBJECT WITHOUT THE KNOWLEDGE AND CONSENT OF THE WARDEN. TITLE 18 U.S.C. 1791 AND 3571 PROVIDE A PENALTY OF IMPRISONMENT FOR NOT MORE THAN TWENTY YEARS, A FINE OF NOT MORE THAN \$250,000, OR BOTH, TO A PERSON WHO PROVIDES, OR ATTEMPTS TO PROVIDE, TO AN INMATE ANY PROHIBITED OBJECT. ALL PERSONS ENTERING UPON THESE PREMISES ARE SUBJECT TO ROUTINE SEARCHES OF THEIR PERSON, PROPERTY (INCLUDING VEHICLES), AND PACKAGES. THE WARDEN, UPON A REASONABLE SUSPICION THAT A PERSON MAY BE INTRODUCING CONTRABAND OR DEMONSTRATING ACTIONS THAT MIGHT OTHERWISE ENDANGER INSTITUTION SAFETY, SECURITY, OR GOOD ORDER, MAY REQUEST THE PERSON, AS A PREREQUISITE TO ENTRY, TO SUBMIT TO A VISUAL SEARCH, PAT SEARCH, URINE SURVEILLANCE TEST, BREATHALYSER TEST, OR OTHER COMPARABLE TEST. A VISITOR HAS THE OPTION TO REFUSE ANY OF THE SEARCH OR TEST OR ENTRANCE PROCEDURES, WITH THE RESULT THAT THE VISITOR WILL NOT BE PERMITTED ENTRY TO THE INSTITUTION.

A condensed notice should be used on roadways leading to the institution. This notice should state words to the effect:

"Warning - All persons entering this Federal property are subject to a search of their person and/or property (including vehicle)."

16. INSTITUTION SUPPLEMENT. Each Warden shall prepare an Institution Supplement implementing the procedures for both search and arrest authority. The Institution Supplement must be forwarded to the Regional Director for approval prior to its issuance.

At a minimum, the Institution Supplement shall include information regarding:

- a. guidance on when a search/test may be performed;
 - b. instructions for arresting/detaining individuals and giving Miranda warnings;
 - c.
- contractual procedures with local holding facilities;
- d. interrogating persons and processing arrests in conjunction with the FBI or U.S. Marshals Service;
 - e. procedures for handling disruptive visitors with local authorities; and
 - f. maintaining a record of staff review of this Program Statement.

17. EMPLOYEE REVIEW OF DIRECTIVES. The Warden shall ensure each employee reviews this Program Statement and, when issued, the Institution Supplement. New employees shall review the Program Statement and Institution Supplement during new employee orientation, and will complete a record of review (see Section 16(f), above). The Human Resource Office is to document the employee's review of each directive.

/s/
Kathleen M. Hawk
Director